

THE ROLE OF THE LEGAL EXPERT IN ESTABLISHING A CONDOMINIUM OWNERS' ASSOCIATION

The concept of condominium ownership is very useful. It can be the solution to many of the problems relating to the use, maintenance, and repair of the privatized apartment buildings in Romania.

Condominiums are not unknown in Romania. This form of ownership was first authorized by the Law of May 3, 1927, as well as in the legal provisions regarding common ownership of property in the Civil Code.

What is a Condominium?

A condominium is a form of ownership of an apartment building, with some portions designated for individual ownership (the apartments or shops, which are called "units"), and the remainder designated for joint ownership by the owners of the units (the common property).

In a condominium, the owner of a unit is also the owner of an interest in the common property of the building. Common property includes: hallways, stairways, the roof, the laundry room, the land under and around the buildings, and so on. The owners of all the apartments are co-owners of all the common property.

There can be many problems relating to the use, maintenance, and repair of the common property. This is especially true in buildings that were formerly owned and maintained by the state and have now been privatized. The price to purchase these apartments was very low, but the common areas of the property were poorly constructed and maintained, particularly the roofs, service delivery systems, and panel facades. The new owners soon learned that they are responsible for operating and maintaining their property by themselves, and they must also pay the cost of doing so.

Unfortunately, while the former tenants are now the owners, their mentality has been slow to change. Many still wait for the city, COMPREST, or someone else to come and make repairs or take care of the building. As a result, most buildings greatly need capital repairs and improvements.

The Tenants' Associations are no longer an effective form of organization. While the Tenants' Associations collected each occupant's share of common expenses, they did little to control the cost of services and rarely questioned the accuracy of invoices or the quality of service. They rarely operated in accordance with a financial plan or budget, but just tried to meet expenses as they occurred.

When the state sold the apartment buildings, the new owners did not receive a technical evaluation of the building or any other information about its current condition or its

history of maintenance and repairs. They had no way of knowing which problems were in most urgent need of repair and which could be postponed.

The Condominium Owners' Association

The new owners need to get organized so they can begin to address these problems. The best way to improve the quality of life and the conditions of the property of all of the owners of the building is to establish an Owners' Association.

To address the need for organization of the owners, Romania needs a modern Condominium Law. The Parliament is going to consider one in the fall of 1995. In the meantime, an Owners' Association can be established under Law No. 21 of 1924, which provides for the establishment of non-profit associations.

To establish an Owners' Association, the owners must adopt an Association Agreement and register the Owners' Association in the jurisdiction where the condominium is located. This makes the Owners' Association a legal entity. Under existing law, an Owners' Association must be established on a voluntary basis.

The Owners' Association is responsible for managing the common property and regulating the operations of the condominium. Important decisions are made at a general assembly meeting of the Owners' Association. Each apartment is allocated one vote at meetings, and most decisions will be made by majority vote. A few kinds of decisions will require a higher percentage. For example, before the Owners' Association can incur major expenses for installation of new equipment or renovation of the common property, 80% of the voters must vote in favor of the expenditure. The members will vote at a general assembly that must be held at least once a year.

The members of an Owners' Association will elect an Executive Committee to establish policies for the property and to manage the day-to-day affairs of the condominium.

The Association Agreement

The Association Agreement describes the property, how ownership is divided among the individual owners, and how the Owners' Association will be governed and make decisions. The Association Agreement is the master agreement between the Owners' Association and the individual owners of the property.

Registration of the Owners' Association

It is not practical for all of the owners to appear before the notary at the same time in order to certify the authenticity of the Association Agreement. It might be possible for the notary to come to the building and witness the execution of the document there, but this is complicated, even if the notary is willing to come, because all of the owners must be present at the same time.

A different procedure was established in Braşov, where condominium Owners' Associations were first established. A written Association Agreement was signed by all of the owners in the building. A separate document was prepared and signed by all the owners authorizing two representatives of the building to appear before the notary to authenticate the signatures of the others. The notary and the court have accepted this procedure for registration of an Owners' Association as a legal entity.

Once the Association Agreement is registered and the Owners' Association has the power to act as a legal entity, the owners are in a position to manage the common parts of the building. The Owners' Association can succeed, however, only if all the owners understand their responsibilities and are willing to act cooperatively to maintain and improve their property and their living conditions.

Attached is a sample Association Agreement, together with a form for acceptance of the Association Agreement by all the owners of the building.

by
Elisabeta Fărcaş, Attorney

MODEL ASSOCIATION AGREEMENT FOR A CONDOMINIUM OWNERS' ASSOCIATION

CHAPTER I - NAME; LEGAL BASIS; PURPOSES; DURATION

Article 1. The owners of the Property located at _____, in Braşov, Romania, hereby establish a nonprofit association known as _____ Owners' Association ("the Association"). Included in the Property is a building consisting of individual residential apartments [and commercial premises] (the "Units"), together with common areas and facilities that are not part of any residential apartment or commercial premises (the "Common Property").

Article 2. The members of the Association are: *[signatures]*

[add more lines as necessary]

Article 3. The purpose and activities of the Association are as follows:

- Administration and management of the Common Property and the funds of the Association.
- Maintenance, repair, renovation, and improvement of the Common Property.
- Establishment of an annual operation and reserve budget.
- Establishment and collection of monthly maintenance fees from the members of the Association.
- Contracting and assuming obligations on its own behalf and on behalf of the members in matters related to the Property.

- Other activities consistent with the law and with the purposes of the Association, as approved by its members.

Article 4. The Association shall remain in existence as long as the Property shall exist and until the members determine otherwise, in accordance with this Association Agreement and the rules and procedures of the Association.

CHAPTER II - PLAN OF OWNERSHIP

Article 5. The ownership share of each member of the Association shall be based on the proportionate share of the Common Property determined by the size of the owner's Unit.

Article 6. Each Unit, together with its appurtenant undivided interest in the Common Property, shall constitute an individual parcel of real estate, and shall form a unity which may only be sold or otherwise transferred together. Subject only to that limitation and the laws and regulations applicable to all individually owned real property, each Unit may be sold or otherwise freely disposed of by its owner. Each owner may possess and use its individual property, whether for residential or non-residential purposes, in any manner not inconsistent with law or this Association Agreement.

CHAPTER III - SOCIAL CAPITAL, SOCIAL SHARES

Article 7. The social capital of the Association is:

Article 8. The social capital can be increased with cash upon approval of the members in accordance with the law and the rules and procedures of the Association.

Article 9. The social capital can be reduced only in accordance with the law and the rules and procedures of the Association.

Article 10. The Common Property or funds of the Association cannot be encumbered by debts or other personal obligations of the members of the Association.

CHAPTER IV - ADMINISTRATION OF THE ASSOCIATION

Article 11. Upon becoming an owner of a Unit, each owner automatically shall become a member of the Association.

Article 12. All agreements and decisions made by the Association in accordance with voting procedures established by law and in this Association Agreement, shall be deemed to be binding on all owners of Units.

Article 13. At the first General Assembly of the Association, the owners shall elect an Executive Committee which shall be authorized to act on behalf of the owners in the operation

and management of the Association, except for matters for which a vote of the owners is deemed to be necessary by law or by this Association Agreement.

Article 14. The Executive Committee shall meet periodically but not less than four times during a calendar year. The number of members and length of the term of office of the members of the Executive Committee shall be determined by the owners at the first General Assembly. The person who receives the highest number of votes in an election of the Executive Committee shall serve as the chairman and presiding officer of the Executive Committee and the Association.

Article 15. At any General Assembly of the Association, the owners may decide whether to elect an Auditing Committee to review the accounts of the Association and advise the Association and the Executive Committee on the financial affairs of the Association. If there is an Auditing Committee, it shall report to the General Assembly at least once a year on the financial status of the Association.

Article 16. A General Assembly shall be convened at least once each year. The chairman of the Executive Committee may convene a special General Assembly whenever it is deemed to be necessary. The chairman of the Executive Committee must convene a General Assembly within 21 days of receiving a request from the owners of 20% or more of the members.

Article 17. Notice of the convening of a General Assembly shall be given in writing, delivered in person or by first class mail, at least 10 days before the date of the meeting. Such notice must include the date, time, and place of the General Assembly, and an agenda of matters to be considered there.

Article 18. To convene a General Assembly, a quorum of at least 2/3 of the members must be present in person or by proxy. If there is no quorum, the General Assembly may be adjourned and reconvened at any time thereafter. At the reconvened General Assembly, the members may decide the matters included on the agenda of the first scheduled meeting, regardless of whether or not a quorum of 2/3 is present.

Article 19. Each Unit shall be allocated one vote. The vote cannot be divided if there is more than one owner of a Unit. Decisions of the General Assembly shall be made by majority vote, that is, the vote of more than 50% of the members present and voting at the General Assembly, except where a higher number is required by law or this Association Agreement. In case of a tie vote, the vote of the presiding officer shall be decisive.

Article 20. A vote of more than eighty percent (80%) of the members must be had for the following decisions: (a) modification of the Association Agreement; (b) dissolution of the Association and sale of the entire Property; (c) pledging the entire Property as security for a loan or mortgage; (d) renovation of the Common Property or installation of major equipment.

Article 21. Votes may be cast by proxy presented to the presiding officer of the General Assembly prior to the commencement of the meeting. A proxy must be in writing and dated,

and must be executed by or on behalf of all co-owners of the Unit for which the vote is to be cast.

Article 22. Decisions and minutes of the General Assembly must be put in writing and kept among the records of the Association. The minutes of the previous General Assembly must be approved at the next General Assembly.

Article 23. A deputy chairman shall be elected and shall replace the chairman and shall carry out the chairman's tasks when the chairman is absent or unable to fulfill his responsibilities.

Article 24. A secretary shall be elected to prepare and retain the minutes of the meetings of the Executive Committee and the General Assembly of the Association. He will keep files and documents as directed by the Executive Committee.

Article 25. A treasurer shall be elected to be responsible for the funds and property of the Association. The treasurer shall assure complete and correct accounting records and shall register bills, receipts, and invoices regarding the Association. The function of treasurer may be accomplished by the secretary.

CHAPTER V - OBLIGATIONS OF THE MEMBERS

Article 26. The costs of operating and managing the Association and maintaining, repairing, renovating, or improving the Common Property shall be deemed to be Common Expenses. The members shall be liable to pay to the Association their share of the Common Expenses, in accordance with their proportionate ownership interest in the Common Property.

Article 27. No member shall be exempt from liability for contribution toward the Common Expenses, by waiver of the right to use and enjoyment of any of the Common Property or facilities or by the abandonment of the Unit or otherwise.

Article 28. The amount of the assessment for Common Expenses shall be determined in an annual budget to be adopted by the members at a General Assembly prior to the beginning of each fiscal year. In the event that the assessment is inadequate because of unanticipated Common Expenses, a special assessment may be made upon an affirmative vote of 2/3 of the members cast at a General Assembly. A special assessment shall be paid by the members in accordance with their respective shares or on such other terms as approved by vote of the members.

Article 29. Nonpayment of any regular or special assessment for more than 30 days shall constitute a default. Interest in an amount to be set from time to time by the Executive Committee but not higher than the highest legal rate shall be charged and payable to the Association by the defaulting member. The Association may sue a member for assessments in default and interest due thereon after 90 days.

CHAPTER VI - RESTRICTIONS ON USE; CONSTRUCTION

Article 30. Each member is entitled to use the Common Property, subject to any restrictions in the law or regulations of the authorities, this Association Agreement, or any Bylaws or Rules and Regulations of the Association, but no member may exercise the right to use the Common Property in such a manner as to harm the rights or interests of any other member.

Article 31. An owner of a commercial Unit is entitled to use such Unit subject to any restrictions in the law or regulations of the authorities, this Association Agreement, or any Bylaws or Rules and Regulations of the Association, but no member may use a commercial Unit in such a manner as to harm the rights or interests of any other member.

Article 32. An owner of a residential Unit is entitled to use such Unit as a dwelling for the owner, his/her family, tenants or guests. An owner of a residential Unit shall have the right to lease the Unit provided the tenant agrees that its use of the premises will be subject to the restrictions in this Association Agreement or any Bylaws or Rules and Regulations of the Association.

Article 33. The owner of a Unit is responsible for maintaining the Unit in good repair and is liable for any damage caused by failure to do so. A member may make alterations to the structure of his Unit only with the approval of the Association and, if approved, only at his own expense and risk. A member must pay any expenses incurred by the Association for repairing or replacing parts of the Common Property damaged by the member's fault.

Article 34. Representatives of the Association shall be permitted to enter a Unit, after giving at least 5 days' written notice to the owner, to make repairs, perform maintenance, or replace Common Property within the Unit. If the need for access to a Unit is urgent, no such notice shall be required.

Article 35. Members may not install electrical, television, or telephone equipment, air conditioning equipment, or any other machinery on the exterior of the Property, or to perforate the walls or the roof of the Property except with the written authorization of the Association after approval at a General Assembly.

CHAPTER VII - ENFORCEMENT; BYLAWS; RULES AND REGULATIONS

Article 36. Administration of the Association shall be in accordance with the provisions of this Association Agreement, and any Bylaws or Rules and Regulations of the Association, which shall be adopted by the members at a General Assembly.

Article 37. Each occupant of a Unit shall comply with the provisions of this Association Agreement and any Bylaws or Rules and Regulations of the Association, and with duly adopted decisions and resolutions of the Association. Failure to comply with any such provisions shall be grounds for an action brought by the Association to recover damages or to seek injunctive relief, in accordance with the Civil Code of Romania.

Article 38. If a decision of the General Assembly or the Association is contrary to law or this Association Agreement, or leads to considerable grievance of the interests of a minority of the members, any member may commence a legal action against the Association for

invalidation of the decision within 60 days of when it is made. The legal action shall not suspend the execution of the action unless the court determines that such suspension is reasonable.

Article 39. Resolution of disputes between the Association and third physical or legal parties is within the competence of the Romanian courts of law. Resolution of disputes of the Association with foreign legal or physical parties are within the competence of the legal bodies stipulated by Romanian law.

CHAPTER VIII - REVOCATION OR AMENDMENT

Article 40. This Association Agreement may be revoked or amended only upon the affirmative vote of more than eighty percent (80%) of the Unit owners.

Article 41. The Association may be dismantled:

- when the purpose for which it was legally constituted is not accomplished;
- by decision of the General Assembly adopted by at least eighty percent (80%) of the owners.

Article 42. This Association Agreement has been prepared in six (6) copies by the members of the Association and has been authenticated by the State Notary office of the jurisdiction of Braşov.

AUTHORIZED REPRESENTATIVES OF MEMBERS OF THE ASSOCIATION

[Signatures of Members Authorized to Sign on Behalf of All Members]

AUTHORIZATION FOR REGISTRATION OF ASSOCIATION AGREEMENT

The following persons, owners of the property located at: _____
_____ [street], _____ [number], _____ [block] in the City of Braşov,
accept and agree to be bound by the attached Association Agreement, and authorize their
duly elected representatives, _____,
_____, and _____, to
register the Association on their behalf:

| Apt. No. | I.D. No. | Name | Signature |
|----------|----------|------|-----------|
| | | | |
| | | | |
| | | | |
| | | | |
| | | | |
| | | | |
| | | | |
| | | | |
| | | | |
| | | | |
| | | | |
| | | | |
| | | | |
| | | | |
| | | | |
| | | | |
| | | | |
| | | | |
| | | | |
| | | | |